

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant: LOT 3 ACQUISITION FOUNDATION, LLC  
Serial No.: 09/823,508  
Filing Date: March 29, 2001  
Title: VIDEO SURVEILLANCE VISUAL RECOGNITION  
Examiner: Tung T. Vo  
Art Unit: 2621  
Conf. No.: 9844  
Attorney Docket No.: 84022.0136

TO: Mail Stop APPEAL BRIEF-PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY TO NOTIFICATION OF NON-COMPLIANT  
APPEAL BRIEF**

Dear Commissioner,

Appellant replies within thirty days to the Notification of Non-Compliant Appeal Brief dated February 1, 2010. Please consider the following:

**Summary of Claimed Subject Matter** begins on page 2 of this paper; and

**Remarks** begin on page 4 of this paper.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 74 is directed to a method that includes “recognizing an image of a buyer”<sup>1</sup> associated with a “mobile buyer unit”<sup>2</sup> and sending a portion of a “first transaction message”<sup>3</sup> to a “fixed vendor”<sup>4</sup> in response<sup>5</sup> to recognizing the image of the buyer. The fixed vendor is selected<sup>6</sup> in response<sup>7</sup> to the first transaction message being received from the mobile buyer unit that is configured to “communicate with a network.”<sup>8</sup> The image of the buyer is recognized by comparing it “to a stored image of the buyer.”<sup>9</sup> A “visual analyzer module”<sup>10</sup> “recognizes the image of the buyer” using “neural-based software” and/or “adaptive learning software.”<sup>11</sup>

Independent claim 90 is directed to a “controller”<sup>12</sup> that comprises a “processor,”<sup>13</sup> a “visual analyzer module,”<sup>14</sup> and a “communicator”<sup>15</sup> that sends “a portion of [a] first transaction message to [a] fixed vendor in response to the visual analyzer module recognizing an image of

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<sup>1</sup> See, e.g., p. 7, lines 1-15; p.16, line 24 through p. 17, line 8; p. 23, line 25 through p. 25, line 28; p. 27 lines 1-17; p. 28 lines 4-15; p. 29, line 26 through p. 30, line 21; p. 33, lines 1-15; and p. 34, lines 10-18. Citations are to page and line numbers from the application as filed for Serial No. 09/823,508.

<sup>2</sup> See, e.g., p. 5, line 27 through p. 6, line 29; p. 9, lines 1-5; p. 23, line 25 through p. 25, line 28; p. 27, lines 1-17; p. 35, lines 1-2; and FIGS. 1-2.

<sup>3</sup> See, e.g., p. 23, line 25 through p. 25, line 28; p. 27 lines 1-17; and p. 35, lines 10-12.

<sup>4</sup> See, e.g., p. 5, line 27 through p. 6, line 29; p. 23, line 25 through p. 25, line 28; p. 27, lines 1-17; p. 28, lines 4-15; and p. 24, lines 28-29.

<sup>5</sup> See, e.g., p. 23, line 25 through p. 25, line 28.

<sup>6</sup> See, e.g., p. 15, line 37 through p. 16, line 17; p. 23, line 25 through p. 25, line 28; p. 27, lines 1-17; p. 29, line 26 through p. 30, line 21; and p. 31, lines 12-18.

<sup>7</sup> See, e.g., p. 23, line 25 through p. 25, line 28.

<sup>8</sup> See, e.g., p. 2, line 29 through p. 3, line 8; and p. 3, lines 7-15.

<sup>9</sup> See, e.g., p. 25, lines 13-28; and p. 28, lines 4-15.

<sup>10</sup> See, e.g., p. 28, lines 4-15; p. 29, line 26 through p. 30, line 21; p. 33, lines 1-15; p. 34, lines 10-18; and FIG. 3.

<sup>11</sup> See, e.g., p. 15, line 37 through p. 16, line 17; p. 28, lines 4-15; p. 29, line 26 through p. 30, line 21; p. 33, lines 1-15; and p. 34, lines 10-18.

<sup>12</sup> See, e.g., p. 2, line 15 through p. 3, line 5; p. 9, lines 20-27; p. 10, line 17 through p. 11, line 7; p.13, line 24 through p. 14, line 22; and FIGS. 1, 3.

<sup>13</sup> See, e.g., p. 2, line 15 through p. 6, line 5; p. 9, lines 20-27; p. 10, line 17 through p. 11, line 7; p. 13, line 24 through p. 14, line 22; and FIG. 3.

<sup>14</sup> Where support for elements has already been shown, it will not be repeated.

[a] buyer.”<sup>16</sup> The processor utilizes “software to select a fixed vendor in response to [the] first transaction message [being] received from a mobile buyer unit.” As noted above, the visual analyzer module recognizes the image of the buyer using neural-based software and/or adaptive learning software.

Independent claim 95 is directed to a “mobile buyer unit” as described above. The mobile buyer unit comprises a “detector”<sup>17</sup> and a “communicator”<sup>18</sup> that sends “[an] image of [a] buyer and a first transaction message to a controller via a network.” The detector “records an image of a buyer associated with a mobile buyer unit.” The controller comprises a “visual analyzer module” that recognizes the image of the buyer by comparing the image of the buyer to a stored image of the buyer using neural-based software and/or adaptive learning software.

No means plus function or step plus function claims under 35 U.S.C. § 112, sixth paragraph are being appealed.

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<sup>15</sup> See, e.g., p. 3, line 7 through p. 6, line 5; p. 8, lines 22-30; p. 12, lines 8-12; and FIGS. 1, 3.

<sup>16</sup> For claims 90 and 94, see support shown with respect to claim 74.

<sup>17</sup> See, e.g., Sensor 44 of FIG. 1 and p. 9, line 29 through p. 10, line 15.

<sup>18</sup> See, e.g., Communicator 46 of FIG. 1 and p. 10, line 17 through p. 11, line 7.

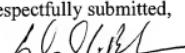
## **REMARKS**

Appellant replies within thirty days to the Notification of Non-Compliant Appeal Brief (“Notification”) dated February 1, 2010. In the Notification, the Examiner asserts that it is improper for the Summary of Claimed Subject Matter to map to a published application. Appellant respectfully disagrees. All that is required is that the Summary of Claimed Subject matter “refer to the specification.” 37 C.F.R. § 41.37(c)(1)(v); M.P.E.P. § 1205.02. No distinction is drawn in the rules between the application as filed and the published application. In Appellant’s Brief, Appellant cited to the published application in the Summary of Claimed Subject Matter.

However, in order to expedite this appeal, Appellant submits a revised Summary of Claimed Subject Matter section, with citations to the application as filed. Pursuant to M.P.E.P. § 1205.03, “[w]hen the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter . . . will suffice.” This paper includes a revised Summary of Claimed Subject Matter section, and Appellant respectfully requests withdrawal of the designation of Appellant’s Brief as being non-compliant.

Respectfully submitted,

Dated: 2/4/10

  
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